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AMENDMENTS TO THE DRAWINGS:

No amendments to the drawings are made or necessary. FIG.'s 7 and 8 were timely filed with the application and are referenced in the specification at paragraphs [0040] and [0041] respectively. Correction is made above to the specification section titled Brief Description Of The Drawings to comply with the requirements of MPEP 608.01(f) that the section refer to the different views.

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REMARKS

This Amendment is being submitted in response to the Official Action dated October 18, 2007. Claims 1-4, and 8-10 are amended. Claims 13-20 are withdrawn. Claims 21-24 are new. Claims 1-12 and 21-24 remain pending in this application.

The Examiner rejects claims 1-3, 5-9, 11 and 12 as being anticipated by U.S. Patent 5,674,010 to Dussich ("Dussich"). Dussich is in some ways similar to the present invention but with structure assembled substantially differently such that the disclosure of Dussich is incapable of the utility provided by the present invention. More specifically, the Examiner asserts that the Dussich discloses an elongate bendable shape retaining spine having a T shape bonded lengthwise to an edge of the bag. Importantly, the Examiner is incorrect that the elongate strips are bonded to the bag. It can be seen from the specification of Dussich, as cited by the Examiner, that the elongate strips of Dussich are inserted between two layers of the bag material which are then "adhered to *each other* so as to retain the strip." Col. 2 lines 58-59. The strips are integral to the bag material and not bonded to the surface. This layering process is clearly depicted in Dussich's FIG. 6 and is an important distinction with the present disclosure because this method of combining the shape retaining spine with the bag occurs during material manufacturing and precludes addition of the spines to already formed bag material as the material is fed into an existing Form, Fill & Seal ("FFS") line. Rather, such a line would need to be retooled and/or modified to accept bag material with integral strips that must be cut and sealed. Under the present disclosure, the bendable shape-retaining spines are positioned when applied to the surface of the bag material so as not to interfere with the filling and sealing steps. See [0032], lines 15-17. The language of claim 1 limits the present disclosure to spine applications on the

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"face" of the bag. Claim 1 has been amended to replace the term "face" with "surface" to be more clear on this point.

The Examiner also asserts that Dussich discloses spines in which one section of the spine is formed at an angle to another section (claim 2) and having a "T" shape (claim 3) in which the horizontal axis of the "T" is parallel to the top seam and the vertical axis points to the bottom (claim 8). Dussich discloses strip running the entire vertical length of a bag having a "widened portion" (3a), as described in the specification. Col. 2 ln. 30. It is a mischaracterization to describe the widened portion of the vertical strip as having a horizontal axis or in any way forming an angle with the vertical strip. The specification in no way suggests a horizontal or otherwise non-vertical orientation of the widened portion of the spine, which is only slightly wider than the vertical strip in the context of its length. The widened portion is further many times longer in the vertical axis than it is wide in the horizontal axis and is thus vertically oriented itself.

Notably, the widened portion (3a) of the strip serves to retain the bag closed when the open end is rolled or twisted closed. Col. 2 lns. 27-35. The angle or "T" configuration of the present invention discloses a portion of the closure strip having a clearly horizontal or non-vertical linear orientation for the purpose of retaining the mouth of the bag open and not for retaining it closed. See [0033]. Dussich's widened portion (3a) are not significantly wider than the vertical portion and are not capable of supporting the mouth of the bag in an open position. Dussich simply lacks all of the elements of claims 1-3, 5-9, 11 and 12, lacks the operational ability afforded by these structural acting as a whole and thus fails to anticipate the claims.

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The Examiner rejects claims 1, 2, 3, 5 and 8 as being anticipated by U.S. Patent 220,510 to Weaver ("Weaver"). According to the Examiner, the sheet metal insert (B) in pouch (A) constitutes an elongate bendable shape retaining spine. This is again a mischaracterization of the element. Sheet B is substantially planar and is not a spine, which is inherently linear as in the spine of one's back or the spines of a porcupine. Weaver acknowledges that he has, elsewhere, disclosed stiffening strips for packaging but that the present disclosure is not such. Col. 4, ¶4. While Weaver is T shaped in as much as it has arms wider than the main body, the body is substantially rectangular and not linear. In further contrast, the disclosed spine of the present invention, which is inherently linear, is further limited in claim 1 as "elongate," meaning long and thin. Long

The planar nature of Weaver's metallic sheet (B) is undesirable and not in use the modern packaging industry for several reasons. First, the element requires substantially more material than the linear spines of the present invention or even that of Dussich described above. More importantly, however, the planar or sheet design is incompatible with heat seamed FFS machines. Specifically, the width of the flat sheet spans seam 20 such that heat sealing by FFS equipment is not possible. Weaver fails to appreciate this problem as the pouches of that era were not heat seamed or assembled, filled and sealed by automated equipment such as modern FFS machines. Weaver further avoids the conflict between his sheet metal insert and seam location through pouch construction utilizing an extremely wide overlap of bag material to cover the sheet, as seen in Weaver's FIG. 3 or the addition of an additional, separate cover sheet of bag material as seen in Weaver's FIG. 4. These extra steps and extra material are not compatible with modern FFS machinery and are wasteful material. With respect to claim 5, it is further observed

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that the pouch of Weaver is for storage of chewing tobacco (Col. 1, ln. 21) and not for storage of food items. Thus, Weaver fails to disclose all of the elements of claims 1, 2, 3, 5 and 8 and therefore fails to anticipate the claims.

The Examiner rejects claims 1, 2, 4 and 5 as being anticipated by U.S. Patent 4,267,768 to Ceislak ("Ceislak"). The Examiner asserts that the closure wires 12, 14 of Ceislak anticipate the elongate bendable shape retaining spines of the present invention and have a "L" shape. However, the construction of the Ceislak bags differs from that of the present invention and are thereby disposed to closure only by twisting the end of the bag about its longitudinal axis rather than rolling or folding the open end of the bag about a lateral axis. See FIG. 2 and Col. 4 lns. 62-65. More specifically, Ceislak discloses a bag that is formed by application of a hot knife 42 cutting layered sheets of bag material to form a seam. The knife simultaneously splits two closure wires which are held together by a plastic web (see FIG.'s 3A and 3B) such that each wire is incorporated into the seam of a sequential bag in the production line. Col. 4 lns. 50-62. Thus, the closure wires must be incorporated into the side seams of the bag at the time of manufacture and cannot be bonded to the surface of the bag, as presently claimed, or positioned so as not to interfere with the top seam (which Ceislak lacks). bonding of the spines of the present invention to the surface of the bag, as opposed to integral to the side seams is necessary to incorporate the invention into an existing FFS line without need to retool the line and without interfering with the heat seal process commonly used in such lines, as previously observed.

It is further observed that the "L" shaped closure wire of FIG 7A is not fully bonded to the bag seam. Only the vertically oriented leg of the "L" is bonded to the bag while the other remains unattached so that it may be subsequently wrapped around the twisted end of the bag.

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See FIG. 7B. and Col. 6 Ins. 56-64. Thus the "L" shape of the Ceislak disclosure is immediately lost on use and unavailable to retain the bag in the open position, as previously discussed. Claim 2 has been amended to more clearly incorporate this limitation. Ceislak fails to disclose all of the elements of claims 1, 2, 4 and 5 and therefore fails to anticipate the claims.

Lastly, the Examiner rejects claims 1, 2, 5-7, 9 and 12 as being anticipated by U.S. Patent 5,766,399 to Clark ("Clark"). The Examiner asserts that Clark discloses a bendable wire bonded to the a bag parallel to an edge of the bag and with one section of the wire at an angle to another section of the wire. The Examiner specifically indicates that FIG. 5 depicts two co-linear sections of wire that are at a 180 degree angle to one another. Geometrically speaking, an angle is the figure formed by two lines diverging from a common point or two planes diverging from a common line. Thus, the co-linear wires of Clark do form a 180° angle to one another. Such an angle is particularly referred to as a straight angle by mathematicians in the field of geometry. However, in the context of the industry of the present invention, and in general use outside of mathematics circles, the term angle is used to mean lines diverging from a point at anything other than a straight angle. This is further evidenced by the definition of the term straight as "without a bend, angle, or curve."¹

Even assuming for the sake of argument that the term angle includes a "straight" angle, the angled wires of Clark are not capable of holding the mouth of the bad in an open position, as the angled portion of the present invention does. By bending the angled portion of the present invention toward the interior of the bag the mouth of the bag can be retained open to allow

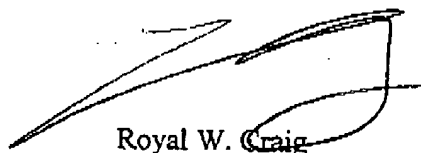
¹ straight. Dictionary.com. Dictionary.com Unabridged (v 1.1). Random House, Inc.
<http://dictionary.reference.com/browse/straight> (accessed: April 14, 2008).

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unimpeded access to the contents. Bending the straight angle of Clark only serves to close or seal the bag or at best holds the sides of the bag in an upright but not open configuration. Claim 2 has been amended to limit its scope to angles other than the straight angle of Clark that are capable of retaining the bag mouth open. Clark fails to disclose all of the elements of claims 1, 2, 5-7, 9 and 12 and therefore fails to anticipate the claims. New independent claim 21 and claims dependent thereon further reflect this limitation.

Considering these remarks, it is respectfully submitted that none of the cited references discloses the elements and structure claimed by the applicant. In view of the above, claims 1-12 and 20-24 are believed to avoid all of the rejections set forth in the Official Action. It is, therefore, believed that this application is now in the proper condition, and a Notice of Allowance is respectfully requested.

Respectfully submitted,



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